

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 133 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NOORMOHMED UMERBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR PV HATHI for Petitioner  
Mr H H Patel, AGP for Respondent No. 1, 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/03/2000

ORAL JUDGEMENT

This is a petition under Article 14, 19, and 226 of the Constitution of India read with provisions of Bombay Land Revenue Code, filed by the petitioner for appropriate writ, order or direction quashing and setting aside the order dated 18.8.1987 placed at Annexure 'C' to

the petition passed by the first respondent and for direction directing the State Government to regularise possession of the land occupied by the petitioner referred to in the petition or to direct the first respondent to dispose of the application for regularisation filed by the petitioner afresh after giving an opportunity of hearing to the petitioner.

2. Brief facts of the petition are as under:

The petitioner is a person belonging to Sumra caste recognised as such by the Bakshi Commission. The petitioner was a labourer earning his livelihood by putting in labour work. He possessed no land and, therefore, he was a landless labourer. The petitioner claims that Government of India, and in turn Government of Gujarat had formulated a 20-point programme in the year 1974 and decided to allot land to landless labourers so that they can earn their livelihood. It had come to the notice of the petitioner that Government waste land of Survey No.213 situated on the outskirts of Gondal Municipal limits and near the road going to village Movia and Rupavati was available for allotment to the landless labourer. He made application to the Taluka Development Officer as well as Mamlatdar for allotment of the said land to him for carrying on some work of his own to earn his livelihood. At the same time, in anticipation of permission and allotment of land to him, he started making some construction on the said survey no.213 and occupied a piece of land admeasuring about 1533.46 sq. metres. The petitioner started staying on the said land and also started manufacturing cement pipes by manual labour with the help of his family members. The petitioner, accordingly, is in occupation of the said land since 1979.

3. Along with the petitioner, other persons also started staying on the said land and also started doing their business or labour work. Thereafter, Mamlatdar, Gondal started proceedings under Section 61 of the Bombay Land Revenue Code (for short, 'the Code') and registered case as Encroachment Case No.47/79 against the petitioner. The petitioner placed all relevant materials and facts and his suffering/hardship etc. before the said authority. Thereafter the second respondent made strong recommendation to the Collector, Rajkot and/or competent authority to regularise possession of the petitioner under order dated 18.2.1980. The petitioner was given time to make necessary application to the competent authority for regularisation and accordingly the petitioner made application dated 27.2.1980 to the

Collector, Rajkot, who was the competent authority to regularise possession and consequent encroachment. Copy of the said application is placed at Annexure 'A' to the petitioner. The petitioner received no reply. However, all of a sudden, he was served with a notice from the Mamlatdar, Gondal calling upon the petitioner to remove the encroachment within seven days. The said notice is dated 12.3.1984.

4. The petitioner submits that since the said notice was ex-facie illegal, unauthorised and without jurisdiction, he filed Special Civil Application No.1875/84 before this Court and this Court passed order dated 28.3.1984 rejecting the said petition but he was given time to again approach the authority for regularisation and to see that his application for regularisation is decided. He has placed copy of the said order at Annexure 'B' to this petition.

5. The petitioner also submits that his brother Ibrahim Umar Sumra was also similarly situated and was occupying a part of the same waste land of the same survey number and he was also received notice of eviction. He had also filed petition in the year 1982 and the State Government agreed to dispose of the said application for regularisation of possession made by the said Ibrahim Sumra and it was also agreed, as recorded by the High Court in its order, that Ibrahim Sumar will be given opportunity of being heard before disposing of his representation. The said petition was disposed of in March 1982 and his application was also processed for regularisation along with the application made by the petitioner.

6. The petitioner also submits that the application for regularisation made by him and his brother Ibrahim Sumra referred to above were duly processed and thereafter, the State Government seems to have called upon the Mamlatdar to fix the market price of the lands in question and to take the assurance or agreement from the petitioner whether he was willing to pay the purchase price that may be fixed by the Collector, Rajkot. The Mamlatdar ascertained the true state of affairs of the matter of regularisation of the possession of lands in occupation of the petitioner. The Mamlatdar had referred the matter to the Dy.Town Planner, Rajkot, to ascertain the market price of the land in the village and the said Town Planner had fixed Rs.10/- per sq.metre as reasonable price. The Mamlatdar also found that

(1) the applicant belonged to Socially and

Economically Backward class community,

(2) the land in question was a Government waste land,

(3) that there was no breach of ribbon development rules,

(4) petitioner had spent about Rs.30,000/- in making construction over the land which was in his possession since last 10 years.

(5) the Executive Committee of the Municipality had also given no objection in its Resolution dated 2.8.1978,

(6) the petitioner had given necessary assurance to pay market price which was about Rs.15,150/-.

7. The Mamlatdar accordingly forwarded his report dated 6.9.1986 to the Collector, Rajkot recommending the regularisation through Dy.Collector, Rajkot. The Dy.Collector also verified the records and recommended regularisation. The Collector, Rajkot, who is otherwise competent to regularise such possession, was required to obtain report from the State Government as the lands were used for industrial purpose along with residential purpose. The Collector, by letter dated 23.11.1985 also strongly recommended to regularise possession of the land in question and the petitioner was required to pay two and half times the market price i.e. Rs.38,350/- calculated on the basis of market price of Rs.10/- sq.metre as fixed by the Dy.Town Planner. The petitioner, therefore, reasonably expected that the Revenue Department would pass appropriate orders after hearing him as it was agreed before the High Court in the said order - Annexure 'B' to the petition.

8. Though the matter was pending as aforesaid before the State Government, the Mamlatdar issued notice dated 14.5.1986/29.6.1984 for eviction of the petitioner along with his brother Ibrahim Sumra. The petitioner and his brother filed Civil Suit before the Civil Judge (SD), Gondal on 19.7.1984. However, the suit was withdrawn subsequently. The petitioner also submits that without giving any opportunity of being heard, the Revenue Department of the State Government decided the application for regularisation made by the petitioner somewhere in August, 1987 and the said order of the Revenue Department was not sent to the petitioner but was sent to the Assistant Collector, Gondal, who in turn communicated the said decision on 24.11.1987. The

petitioner claims that though the High Court had specifically mentioned that the representation would be disposed of after hearing the petitioner, he was not heard and the representation was decided without hearing the petitioner. The petitioner, therefore, challenged the said order of the State Government on various grounds.

9. The petitioner claims that the said order is illegal inasmuch as it was passed without giving an opportunity to the petitioner of being heard. That the State Government ought not to have passed such order without hearing the petitioner. That though the State Government had afforded opportunity of hearing to his brother Ibrahim Sumra, no such opportunity was given to the petitioner and therefore, discriminatory treatment has been extended by the State to the petitioner. That the order in question has been passed by the State mechanically and without applying its mind on various aspects and materials available. That the State Government has also omitted to consider recommendations made by the Mamlatdar, Dy. Collector and Collector before passing the order in question. That the order is bad, unreasonable and unjust.

10. On the aforesaid grounds, the petitioner has challenged the said order dated 18.8.1987 placed at Annexure 'C' and has prayed to quash and set aside the said order. The petitioner has also prayed to direct the State Government to issue orders for regularisation of the possession of the land occupied by the petitioner referred to hereinabove. The petitioner has further prayed for an interim injunction restraining the respondents from dispossessing the petitioner from the said land described hereinabove which is a part of survey no. 213.

11. The petition was admitted and notice was issued for interim relief. In the meantime, ad-interim relief was granted by this Court in January 1988. The State Government has put in appearance but on going through the records of the matter, it seems that no papers or affidavit has been filed by the State to defend the case.

12. Heard Mr D K Mehta, on behalf of Mr P V Hathi for the petitioner. I have also heard Mr H H Patel, AGP for the State. Since the State Government has not filed any affidavit and has not submitted any document, the Court has to depend upon the averments made in the petition and supported by the affidavit of the petitioner. From the petition as well as from the affidavit on record, it is very clear that the petitioner had applied for allotment

of the land in question which is part of survey no.213. At the same time, he also started some construction and further started manufacturing of cement pipes on the said land. These facts are not very much in dispute. The petitioner has been occupying this land since 1979 and that it is not the case of the respondents that he was ever dispossessed since 1979. So the fact remains that the petitioner is on this land since 1979. It is also the fact that he belongs to OBC category. The land in question is Government waste land and according to the petitioner, his case falls within the four corners of the scheme formulated by the State Government for allotment of land to the landless labourers to earn their livelihood. Therefore, the petitioner had approached the appropriate authority.

13. It is the fact that though the case of the petitioner was recommended favourably by the Mamlatdar, Dy. Collector and Collector, the matter was referred to the State and the State ultimately rejected the said claim of the petitioner. It is the positive case of the petitioner that the State had rejected the representation of the petitioner without affording opportunity of being heard. These allegations have not been controverted and, therefore, it has to be accepted that the petitioner's representation has been rejected without hearing the petitioner. It is not disputed that after all it is a discretionary matter to be decided by the State but when representation has been made and it has been recommended by three authorities at least reasonable opportunity of being heard ought to have been granted to the petitioner before rejecting his representation. That has not been done by the State and no reason has been assigned for not giving opportunity of being heard to the petitioner. It would be necessary to take into consideration the fact that the petitioner's case was recommended by the Mamlatdar and Dy. Collector favourably and that fact has not been disputed and denied by the State. Therefore, the petitioner's representation should have been appropriately considered by the State. Therefore also it was extremely necessary for the State to hear the petitioner before rejecting the representation of the petitioner. By not providing the said opportunity to the petitioner, the State Government has committed serious illegality and this action on the part of the State was clearly in violation of principles of natural justice.

14. Under these facts and circumstances of the case, I am clearly of the view that the State ought to have provided reasonable opportunity of being heard to the petitioner before taking ultimate decision on the

representation of the petitioner. It is more so, when the State has not explained its position by filing affidavit or submitted any document in support of the decision arrived at. In the aforesaid view of the matter, when the petitioner's claim has not been controverted by counter-affidavit and when it is not the case of the State that the petitioner was heard before taking the decision and when the decision was taken without hearing the petitioner, I find that such a decision cannot be upheld. In that view of the matter, I find that such a decision has to be treated to be illegal being violative of principles of natural justice. Consequently the said decision contained in the letter of the Dy.Collector at Annexure 'C' at page 19 dated 24.11.1987 deserves to be quashed and set aside. The petition is, therefore, required to be allowed partly.

15. In the aforesaid view of the matter, this petition is partly allowed. The impugned order of the State refusing the representation of the petitioner dated 24.11.1987 addressed by the Dy.Collector at Annexure 'C' is quashed and set aside. The State Government is directed to reconsider the case of the petitioner after giving reasonable opportunity of being heard. Such decision on the petitioner's representation will be required to be taken by the State Government within a period of three months. At the same time, it is further directed that the interim relief to maintain status-quo with respect to the possession of the land in question will remain in force for a period of one month after the date of communication of decision of the Government to the petitioner so that the petitioner can have his alternative remedy if the decision is against him. The State Government is expected to decide the representation objectively and on merits after giving reasonable opportunity of being heard to the petitioner.

Rule made absolute as indicated above. There shall be no order as to costs.

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msp.